IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 16135 of 2007(S)

PETITIONER:

SUBRAMANYAN CHETTIYAR,
NEDIYAVILA VEEDU, PANACHIVILA,
PATHANAPURAM TALUK.

BY ADV. SRI.V.PREMCHAND

RESPONDENTS:
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1. BABY, D/O RAJAMMA,
AJAYA MANDIRAM, EDAMULAKKAL VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT.

2. RESHMA, AGED 11 YEARS (MINOR),
DO. DO.

3. SUDHEESH, AGED 8 YEARS (MINOR),
DO. DO.

4. VISHNU, AGED 4 YEARS (MINOR),
DO. DO.
(RESPONDENTS 2 TO 4 ARE REPRESENTED BY THE
1ST RESPONDENT MOTHER).

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/5/2007, THE COURT ON 4/6/2007 DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.16135 of 2007-S

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Dated this the 4th day of June, 2007.

JUDGMENT

T.R. Ramachandran Nair, J.

This writ petition is filed by the petitioner aggrieved by Ext.P4 order passed by the Family Court, Kottarakkara in I.A.No.413/2006 in O.S. No.194/2005. The petitioner filed the above I.A. Raising an issue regarding jurisdiction of the court in regard to the entertainability of the suit as a preliminary one. By the impugned order, the Family Court repelled the contention raised by the petitioner and dismissed the I.A.

2. Ext.P1 is filed by the first respondent herein along with three minor children seeking various reliefs including claim for past and future maintenance against the respondent (petitioner herein). According to her, the parties had married and were living together and in the wedlock three children have been born to them. In the objection Ext.P2, the petitioner has not disputed the paternity of the children but according to him, there was no valid marriage. It is on the above premise that the petitioner contends that the Family Court has no jurisdiction in the matter.

3. Shri V. Premchand, counsel for the petitioner strongly contended that the view taken by the court below in Ext.P4 that it has ample jurisdiction to try the suit, is not legally correct. In support of his contentions, learned counsel relied upon the decisions of this court in **Suprabha v. Sivaraman** (2006 (1) KLT 712) and Devaki Antharjanam v. Narayanan Namboodiri (2006 (2) KLT 1022).

4. This is a case where, after examining the contentions, the Family Court found that it had jurisdiction to try the suit. The court has also found that if the petitioner has any dispute regarding the marriage, that can be enquired into and decided on merits and after taking evidence under Section 7 of the Family Courts Act. The complaint raised by the petitioner is that the said approach made by the court is not correct in view of Section 7 of the Family Courts Act.

5. A reading of the decision reported in 2006 (1) KLT 712 shows that the issue which came up for consideration in that case is quite different as that of the one raised here. Similarly, the facts of the case leading to the decision in 2006 (2) KLT 1022 are also not identical. Section 7 of the Family Courts Act, 1984 concerns the jurisdiction of the Family Court.

Counsel for the appellant contended that going by Section 7(1)(c) of the Act, it should be a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them and the said contention is not satisfied here. A reading of Ext.P1 shows that the main relief sought for concerns claim for past maintenance, future maintenance, expenditure for the marriage of the second respondent and the claim for the value of the gold ornaments, etc. Going by Section 7(1)(f) a suit or proceeding for maintenance is maintainable in the Family Court itself. The expression 'parties to the marriage' does not find a place in Section 7(1)(f). At any rate, these are questions which may arise for consideration before the Family Court at the time of final disposal of the suit. Therefore, the contention raised by the appellant that going by Section 7 (1)(c) of the Act, the suit is not maintainable, does not appear to be correct, primafacie.

6. It may also be relevant to note here that normally this court will not entertain a preliminary issue regarding jurisdiction to be agitated in this proceedings when the real dispute awaits a final disposal beofre the forum below. In **D.P. Maneswari v. Delhi Administration** (1983) 4 SCC 283) it was held by the Apex Court while dealing with a challenge against orders

from preliminary objections, as follows:

> "After all, tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction, neither the High Court nor this court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

7. Following the above decision, a learned single judge of this court in **Radhakrishnan v. Kerala Lok Ayukta** (2006 (1) KLT 661) held that it is not a healthy practice to entertain the challenge against the proceedings pending before the lower court and tribunals on preliminary objections and keep the main matters pending for years without decision. In view of the above decision also, this writ petition is liable to be dismissed.

8. Further, in this case the court below has categorically observed that if the petitioner has any dispute regarding the marriage, that can be enquired into and decided on merits after taking evidence. Obviously, the

parties have to adduce evidence in the main petition. Therefore, we find that there is no infirmity in the order Ext.P4 passed by the Family Court requiring interference by this court at this stage. The petitioner will be free to agitate the matter at the time of disposal of the main petition, Ext.P1, if he is so advised.

With the above observations, this writ petition is dismissed.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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